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November 17, 1995

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

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RE: Notice of Proposed Rulemaking
Rules and Policies for Direct Broadcast Satellite Service
IB Docket No. 95-168
PP Docket No. 93-253

Gentlemen:

In response to the above referenced invitation for interested parties response to the Notice of Proposed Rulemaking Kennedy-Wilson, Inc. submits the following comments. Kennedy-Wilson's comments are based on our 18 years of experience and as a leader in the auction industry, and based on our hands on experience working with the FCC as a consultant for the first FCC Auction in July 1994 and as the Auction Contractor for the MTA Broadband PCS Auction in December 1994. Kennedy-Wilson's (KW) comments are referenced by the primary paragraph number to which they apply.

79. KW concurs with the FCC's proposal on configuration that the auction consist of the two spectrums; a block of 26 channels at 110° and a block of 24 channels at 148°.

80. While KW concurs that the two channels can be offered in a sequential auction the FCC could also conduct a simultaneous oral sale of the two channels. While it is possible there may be no advantage to the FCC in a simultaneous auction if there is no interdependency between the channels, it is probable that some bidders for one channel would also bid for the second channel being offered. The relative valuation of the channels may, and probably will, be different. In the proposed classic ascending bid auction a bidder primarily interested in the second channel to be offered might prematurely drop out of the bidding for the first channel because of a lack of knowledge

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regarding the ultimate price of the second channel not yet offered. The value of knowing what others are willing to pay is large and since the technology easily exists and the FCC has proven the value of simultaneous auctions KW proposes that the auction be conducted as a simultaneous continuous auction rather than a sequential auction. The auction will not be complex to run, it will allow bidders to adjust their bids as they gain knowledge of the relative value of each channel. The auction can be run as an oral outcry auction, and we estimate the auction will be completed in one to three days. KW therefore disagrees with a sequential auction and recommends a simultaneous continuous auction.

81. Clearly with multiple bidders for a license which cannot be duplicated elsewhere the best result will be obtained with multiple round bidding. The advantage single round sealed bids have over multiple round style occur only when there are few and possibly only one bidder or the bidders may have a very wide range of value. An example is the off-shore drilling rights auctions of the 1960's and 1970's where huge variations in bid amounts occurred with only a few bidders. In classic multiple round oral auctions the price is ultimately set by the underbidder who stops bidding - not the winning bidder. While it is true the winning bidder sometimes is willing to bid further the probability is that in a single round sealed bid the discount from maximum bid is such that the likely outcome is less than that achieved in a multi round ascending bid auction where each bidder obtains the benefit, and resulting confidence to continue, from knowing what others are willing to bid. Combined with the reasoning expressed by the FCC, we concur that multiple round ascending bidding is the appropriate method for conducting the DBS construction permit auction.

82. Two issues are raised here - (1) oral outcry vs electronic bidding and (2) pace of the auction. Addressing the second issue first, KW is very concerned about the issue of allowing bidders time to react to ascending pricing in a multiple round ascending bid oral auction. We propose the auction rules be a modified version of classic oral auction procedures. Specifically as a closing rule we suggest the auctioneer utilize classic auction technique of threatening to close the auction at any time by announcing, three times, the upcoming end of the auction if no further bids are received. However, we would modify the rules to allow each eligible bidder to have one, and only one, opportunity to suspend closure by requesting a break in lieu of bidding. Given the considerable amount of money involved and the need to obtain approvals and possibly additional financing commitments we suggest the break period allowed to each bidder be one hour. We concur that the auctioneer should be given discretion to determine the pace of the auction.

Regarding the suggestion that the "...bidding should be oral or electronic.." we do not believe that the two are mutually exclusive. KW proposes that bidders be allowed to

use electronic means of submitting bids which can be displayed electronically on site and announced orally. The simplest form of this is allowing telephone bids. KW also proposes that direct off-site computer bidding and on site computer bidding be allowed. We have the technology and experience to conduct such a sale and its incremental cost is insignificant relative to the FCC's estimated value. Accordingly KW recommends the auction be oral with bidders having the ability to submit their bids either orally or electronically. Additionally with this procedure KW and the FCC would have the ability to hide bidders identity if the FCC believes such an action would be beneficial.

83. KW does not believe anything is gained by using a combined sealed bid-oral outcry procedure. You can achieve the same result by requiring an opening bid in an oral auction. The risk of the sealed bid followed by only the highest bidders being allowed to participate in an ascending bid oral auction is that otherwise qualified bidders willing to participate in the overbidding may be disqualified because they overestimated the effect of the winners curse and therefore underestimated their sealed bid offer. Additionally excessively low sealed bids resulting from large allowances for the winners curse will send an incorrect signal to all bidders regarding everyone else's estimate of ultimate value thus potentially causing all participants to lower their estimates and reducing the amount ultimately bid at the oral auction. KW strongly recommends this format not be considered for the DBS construction auction.

84. KW has previously suggested that the auction be conducted as a simultaneous continuous oral auction. This eliminates the concerns and problems associated with sequencing and gain the advantages of staged simultaneous auctions and allows bidders to evaluate the amounts bid on each DBS permit. KW repeats its recommendation that the auction be conducted as a simultaneous continuous oral auction.

85. The bid increment is a useful tool for adjusting the pace of the auction. Their use during the course of the auction is important as attempts by bidders to "break down" the increments prematurely can result in lost revenue. For DBS we conclude the bid increments is most crucial at the conclusion of the auction. It is here that the increment must be low enough to withstand legal challenge from bidders who want to make bids above the high bid but below the bid increment. KW suggest that the auctioneer be given discretion to set bid increments subject to a minimum increment of 1% rounded down to the nearest \$100,000 or \$1 million which ever is less.

86. Unless the FCC is convinced there is a high probability of bidder collusion KW sees nothing to be gained by setting a minimum opening bid. Experience with your spectrum auctions indicates no concern regarding receiving fair value with no reserve opening rounds. Further setting minimum opening bids is sometimes interpreted by bidders to be an indicator of the sellers low estimate of value. Given the wide range of value

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estimates for DBS, KW recommends that the FCC not set a minimum opening bid. We do, as a footnote here, recommend the FCC include in its rules the ability for the auctioneer and the FCC to cancel the auction at anytime prior to its conclusion if we see evidence (specific or circumstantial) of bidder collusion. KW also believes it is appropriate to remind bidders of the criminal and civil penalties associated with bidder collusion.

87. KW's concerns are previously covered in this letter.

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89. KW's concerns are previously covered in this letter.

90. KW recommends the upfront payment for eligibility to bid at the DBS auction be set at \$15 million per license. This size is adequate to insure only serious and qualified bidders participate and achieves the desired affect of holding successful bidders to their contracts, yet is not so onerous as to discourage participation. In general KW recommends upfront payments be established utilizing this arbitrary procedure and not be set as a percent of estimated value as it could inadvertently set an upper limit on the bidding if the bidders place an undue weight on the sellers estimate of value. KW concurs there should be a substantial upfront payment for all auctions. If the situation occurs where one bidder may be likely to acquire multiple licenses or permits, then the upfront payment should be a multiple of the individual license upfront payment amount equal to the number of licenses for which the bidder wishes to be eligible.

91. KW opposes this suggestion for the reasons stated above.

92. KW concurs with this procedure. We recommend that the deposit be required no more than five business days prior to the auction and that procedures be established to allow withdrawing bidders to receive their upfront payments back within two business days following verification of their withdrawal from the auction.

93. KW concurs with this procedure.

94. KW concurs with 10 days to increase deposit to 20% of winning bid and 5 days to complete the sale upon confirmation.

96. KW's proposal to conduct a simultaneous continuous oral auction allowing electronic or written bids causes us to recommend that withdrawal of high bids during the course of the auction subject the withdrawing bidder to the same proposed penalty for defaulting winning bidders but without the 3% premium because there is no

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additional cost imposed on the FCC. KW concurs with the proposed penalty for defaulting winning bidders including the three percent penalty.

97. KW, as you know recommends against a single round sealed bid for DBS. But if it is utilized we recommend that the default payment proposed in 96 above be assessed against any withdrawn high bid after the sealed bid deadline. No penalty should be imposed for bids withdrawn before the sealed bid deadline.

98 - 102. KW concurs in this recommendation.

103 - 106. KW does not feel that it has sufficient expertise to comment on this recommendation and question.

1 - 78. KW does not have sufficient expertise to comment on those section requesting comments.

Should there be any questions regarding these comments please do not hesitate to contact either myself or Jim Peterson at (310)314-8438.

Sincerely,



**William R. Stevenson
Vice Chairman**

cc: E. Kwerel, FCC

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